

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

First-Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

DOUGLAS F. CARLSON
MOTION TO CERTIFY PRESIDING OFFICER'S RULING
NO. N2021-1/5 TO THE COMMISSION

May 17, 2021

I move to certify Presiding Officer's Ruling No. N2021-1/5 to the Commission.

I. BACKGROUND

On May 3, 2021, I filed interrogatory DFC/USPS-T3-3.¹ This interrogatory states, "Please provide quarterly service performance scores for the nation, as distinct from individual districts, from 1998 to the present." On Thursday, May 6, 2021, the Postal Service filed a motion to be excused from responding to interrogatory DFC/USPS-T3-3.² The Postal Service advanced two grounds for objection: relevance and undue burden.³

The Commission rule at 39 C.F.R. § 3020.105(b)(2) provided me two days to file an answer to this motion. Since May 8, 2021, was a Saturday, according to rule 108(c) "the applicable time period shall run until the end of the next full business day that the Commission is open and its docketing system is accessible[.]" which was May 10, 2021. However, the presiding officer did not wait for

¹ Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Stephen B. Hagenstein (DFC/USPS-T3-1-12), filed May 3, 2021.

² Motion of the United States Postal Service to Be Excused from Responding to Douglas F. Carlson's Interrogatory DFC/USPS-T3-3, filed May 6, 2021.

³ *Id.* 1.

my response. Instead, he issued ruling No. N2021-3 at 3:38 PM EDT, granting the Postal Service's motion.⁴ The ruling claimed that "quarterly service performance results since 1998 are well beyond the scope of what the Commission would consider in this docket."⁵ This premature ruling was a clear violation of my right to due process in this proceeding. The ruling did note that service performance scores from 2012 to the present "would likely add to the Commission's consideration of the Postal Service's proposed service changes."⁶

I filed my answer at 4:27 PM EDT.⁷ I explained that the Postal Service promises to achieve 95 percent on-time delivery by changing service standards and shifting First-Class Mail from air transportation to ground transportation,⁸ and I observed that this prospective improvement forms the basis for the Postal Service's proposal.⁹ I stated that participants are entitled to test this assertion.¹⁰ And I explained that, in 2000 and 2001, the Postal Service changed First-Class Mail service standards to limit the two-day delivery area to the range of surface transportation.¹¹ I referenced the Commission's public report in Docket No. C2001-3 and explained that participants need to analyze whether service performance increased after the Postal Service implemented a similar change in 2000 and 2001, under justifications similar to the ones advanced in this proceeding.¹² I argued that the data that I requested will allow for this probative analysis before the Postal Service possibly repeats the same mistakes from two decades ago.¹³ I requested that the presiding officer withdraw his ruling.¹⁴

⁴ POR No. N2021-1/3.

⁵ *Id.* 2.

⁶ *Id.*

⁷ Douglas F. Carlson Answer in Opposition to Postal Service Motions to be Excused from Responding to Interrogatories DFC/USPS-T1-15 and DFC/USPS-T3-3 ("Answer").

⁸ USPS-T-1 at 35.

⁹ Answer at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

On May 12, 2021, the presiding officer issued a ruling, No. N2021-1/5, declining to withdraw the previous ruling.¹⁵ The presiding officer claimed to have considered the information provided in my answer.¹⁶ The presiding officer justified his earlier ruling by introducing purported facts that are not in the record in this proceeding, that were not offered by either party during the discovery dispute, that are not subject to official notice, and that are not in the Postal Service's direct case. Specifically, the presiding officer stated:

How the Postal Service's service performance scores changed at a nationwide level 20 years ago are not relevant to this proceeding because the network and processing are significantly different (for example, changes in processing, types of transportation, critical entry times). In addition, the calculation of service performance and service performance scores have changed, and the mechanisms used to compute those scores have changed.¹⁷

The presiding officer added, "Moreover, the quarterly reports incorporated into the record, per POR No. 3, include sufficient historical data that are more relevant to the shape of the current processing and transportation networks, and therefore the Postal Service's ability to enact its proposal as set forth in its filings."¹⁸ The presiding officer concluded that the Postal Service remains excused from responding to DFC/USPS-T3-3.¹⁹

II. DISCUSSION

Rule 107(b) allows the presiding officer to certify a ruling to the Commission when he finds that the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion, and an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy. Two important questions of law and policy exist, and subsequent review would not provide an adequate remedy.

¹⁵ POR No. N2021-1/5, filed May 12, 2021.

¹⁶ *Id.* 2, fn. 6.

¹⁷ *Id.* 3.

¹⁸ *Id.*

¹⁹ *Id.*

The first question is whether service performance scores from 1998 to the present are relevant. The Postal Service offers two main justifications for the proposal in this docket, which would slow delivery of approximately 39 percent of First-Class Mail by at least one day.²⁰ First, the change would reduce costs.²¹ Second, the change would improve reliability, as the Postal Service supposedly would meet the slower service standards at least 95 percent of the time.²²

The Postal Service's claim that slower and more reliable service is better than fast service is not new. While the argument is as unpersuasive today as it was when the Postal Service first advanced it in Docket No. N89-1, for the argument to have any merit, reliability would need to increase. The Postal Service's ability to deliver on its promises certainly is relevant to the credibility of the claims of its witnesses and its proposal, and therefore its ability to deliver is relevant to the Commission's determination of the extent to which the proposal is consistent with the policies of Title 39.

In 2000 and 2001, the Postal Service changed the service standards to provide two-day service only to mail that could be transported within a 12-hour truck drive time; otherwise, the service standard would be three days.²³ The Postal Service also established national clearance times and critical entry times.²⁴ The Postal Service claimed that the shift to surface transportation would increase consistency of delivery,²⁵ which, of course, suggested that slower but more consistent delivery was better than fast delivery. The Postal Service also claimed that the dependability and consistency of air transportation had declined.²⁶

²⁰ USPS-T-3 at 22.

²¹ USPS-T-1 at 2.

²² *Id.* 35.

²³ *See, e.g.,* Op. C2001-3 at 1–2.

²⁴ *Id.* 8.

²⁵ Op. C2001-3 at App. B, p. 13.

²⁶ *Id.* App. B., p. 14.

Substitute “reliability” for “consistency,” and the current docket becomes a re-run of the changes in service standards that the Postal Service implemented in 2000 and 2001. Participants in this docket = are entitled to discover and submit evidence evaluating whether a change in service standards two decades ago, under strikingly similar premises, produced the increase in consistency, or reliability, that the Postal Service promised. The Commission may afford the weight in today’s proceeding that it considers appropriate to the Postal Service’s performance after the change in service standards in 2000 and 2001. But the presiding officer is not entitled to make the decision that the outcome of a change in service standards 20 years ago has no relevance to the Postal Service’s current proposal and to cut off discovery designed to produce such evidence.

The presiding officer also is mistaken in his evaluation of purported facts that he introduced to support his decision. He claimed that “the network and processing are significantly different (for example, changes in processing, types of transportation, critical entry times).” I disagree that the network and processing are different now than in 2000 and 2001 in any material way. First, in both the current docket and Docket No. C2001-3, the debate concerned the comparative reliability of air versus surface transportation. The presiding officer has not shown that the details of air and surface transportation have changed in a way that affects this debate. The most significant innovation in air transportation in recent memory was the addition of dedicated air cargo transportation, and it already existed during Docket No. C2001-3.²⁷ Second, letter mail processing has not changed significantly since 2000. Although the Postal Service has upgraded processing machines as original machines reached end of life and implemented various technology enhancements, the methods of processing the vast majority of letter mail have not changed. For flats, the AFSM 100 machines were implemented beginning in 2001.²⁸ The Postal Service implemented the Flats Sequencing System in the late 2000s. And the Postal Service likely has

²⁷ *Id.* App. B at p. 9.

²⁸ Docket No. R2001-1, USPS-LR-J-173.

upgraded machines to process First-Class small parcels. However, all these technology advancements that have occurred since 2000, most affecting only a portion of First-Class Mail, should have *improved* service performance. If a historical review shows a small increase in service performance after the changes in service standards were implemented, or no improvement in performance, despite advances in technology for sorting mail, participants certainly would be entitled to argue that the shift from air transportation to ground transportation, and a reduction in service standards, did not improve service performance as suggested during Docket No. C2001-3.

Finally, the presiding officer's point about "critical entry times" is unclear. The changes implemented in 2000 and 2001 established nationwide clearance times and critical entry times.²⁹ The Postal Service altered these times when it eliminated overnight delivery of First-Class Mail in 2013. These times are part of an operating plan to process and deliver mail to meet service standards. The fact that these times may have changed does not in any way undermine the evaluation of service performance before and after the changes in 2000 and 2001 for the purpose of examining the credibility of the claims of the Postal Service's witnesses and proposal in this docket.

The presiding officer also noted that "the calculation of service performance and service performance scores have changed, and the mechanisms used to compute those scores have changed."³⁰ While these statements may be true, both the former EXFC measurement system and the current measurement system are supposed to measure service performance. Therefore, participants may properly introduce evidence comparing scores determined under each system. Indeed, the presiding officer noted that service performance scores from 2012 to the present "would likely add to the Commission's consideration of the Postal Service's proposed service changes."³¹ The Commission approved a new

²⁹ Op. C2001-3 at 18.

³⁰ POR No. 5 at 3.

³¹ *Id.*

performance measurement system in 2018,³² so the presiding officer is willing to consider and compare scores from the legacy EXFC system and the new performance system (e.g., from 2012 to 2020). Meanwhile, interrogatory DFC/USPS-T3-3 seeks to measure EXFC scores from 1998 and compare them to EXFC scores in the years after service standards changed in 2000 and 2001. Most of my intended analysis would compare EXFC scores to EXFC scores. The presiding officer's rationale is completely arbitrary because he is willing to compare EXFC scores from 2012 to performance measurement scores from the new system in 2020, and yet he rejects a comparison of EXFC scores from 1998 to EXFC scores in 2002.

Also, regarding burden, even if the compilation of the data would require 20 hours,³³ which is questionable, this amount of effort is trivial compared to the permanent loss of mail service that the Postal Service's proposal in this docket would cause. The Commission should direct the Postal Service to provide the information that is not already publicly available.

Therefore, as a matter of law and policy, the presiding officer erred in excluding discovery of service performance standards before and after the changes in service standards implemented in 2000 and 2001.

The second question is whether the presiding officer's ruling denied me due process or violated the Administrative Procedure Act. The APA requires hearings that allow for "such cross-examination as may be required for a full and true disclosure of the facts."³⁴ After initially ruling against me without allowing me an opportunity to respond to the Postal Service's motion, the presiding officer cited purported facts that are not in the record in this proceeding, that were not offered by either party during the discovery dispute, that are not subject to official notice, and that are not in the Postal Service's direct case. The presiding officer

³² Docket No. PI2015-1, Order No. 4697, filed July 5, 2018.

³³ Postal Service Motion at 5.

³⁴ 5 U.S.C. § 556(d).

did not provide me with an opportunity to rebut his understanding of the facts. Moreover, his decision was arbitrary because he was willing to consider EXFC data from 2012 and data from the current performance measurement system in 2020 but declined to allow me to discover EXFC data from 1998 and compare it to EXFC data from, e.g., 2002. In short, the presiding officer's reasoning to support his original decision to grant the Postal Service's motion denies me due process and fails the APA requirement for cross-examination for a full and true disclosure of the facts.

Lastly, no remedy exists if the Commission declines to require the Postal Service to provide the information that I have requested, as I would then be unable to use this information in testimony or my briefs.

III. CONCLUSION

For the reasons described herein, I request that the presiding officer certify ruling POR N2021-1/5 to the Commission and that the Commission direct the Postal Service to provide service performance scores from 1998 to the present or to advise participants of the location where this information is publicly available.

Respectfully submitted,

Dated: May 17, 2021

DOUGLAS F. CARLSON